

8 10  
NEW NUM BSR

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CARL C. DAVIS\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
GEORGE JOHN KETO\*  
MILTON C. GRACE\*  
JAMES C. MARTIN, JR.\*

\*NOT A MEMBER OF D.C. BAR  
\*ALSO ADMITTED IN NEW YORK  
\*ALSO ADMITTED IN OHIO  
\*ALSO ADMITTED IN MARYLAND

LAW OFFICES  
ALVORD AND ALVORD

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C. RECORDATION NO. 14771 Filed 1425  
20006-2973

AUG 13 1985 12 05 PM

INTERSTATE COMMERCE COMMISSION

OF COUNSEL  
JESS LARSON  
JOHN L. INGOLDSBY  
URBAN A. LESTER

CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

TELEX  
440367 A AND A

BY HAND DELIVERY

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

Dear Mr. Bayne:

No. AUG 13 1985  
Date .....  
Fee \$ 10.00

ICC Washington, D. C.

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) are three executed counterparts of a Management Agreement dated as of August 12, 1985, a "primary document" as defined in the Commission's Rules for the Recordation of Documents.

A description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached hereto and made a part hereof.

The names and addresses of the parties to the enclosed document are:

Manager: United States Rail Services, Inc.  
P.O. Box 3985  
San Francisco, California 94119

Owner: MLL Equipment Investors - I  
c/o ML Leasing Partners, Inc.  
48th Floor  
One Liberty Plaza  
165 Broadway  
New York, New York 10080

Kindly return two stamped counterparts of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 16th Street, N.W., Washington, D.C., 20006

ICC OFFICE OF  
THE SECRETARY  
AUG 13 11 53 AM '85  
MOTOR OPERATING UNIT

*CT. Kappler*

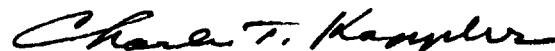
Mr. James H. Bayne  
Page Two  
August 13, 1985

Also enclosed is a check in the amount of \$10.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Management Agreement dated as of August 12, 1985, between United States Rail Services, Inc., Manager, and MLL Equipment Investor - I, Owner, covering two hundred thirty-one (231) 4750 cubic foot covered hopper cars bearing North American Car Corporation serial numbers and RUSX car numbers 5301 through 5531, both inclusive.

Very truly yours,

  
Charles T. Kappler

CTK/mlt  
Enclosures

SCHEDULE A  
MLL EQUIPMENT INVESTORS-I

<u>Description of Cars</u>	<u>Serial # (Inclusive)</u>	<u>Number of Cars</u>	<u>New RUSX Car Numbers</u>
4750 cubic foot covered hopper cars, 100 ton trucks (per North American Car Corporation Specification No. 4750F, attached)	64257-64282	26	5301 - 5326
same as above	486711-486716	6	5377 - 5382
same as above	478100-478149	50	5327 - 5376
same as above	487209-487244	36	5384 - 5419
same as above	487246-487247	2	5421 - 5422
same as above	487249-487275	27	5424 - 5450
same as above	487654-487689	36	5451 - 5486
same as above	487691-487709	19	5488 - 5506
same as above	487711-487732	22	5507 - 5528
same as above	487078	1	5383
same as above	487245	1	5420
same as above	487248	1	5423
same as above	487690	1	5487
same as above	487733-487735	3	5529 - 5531
		<u>231</u>	

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/13/85

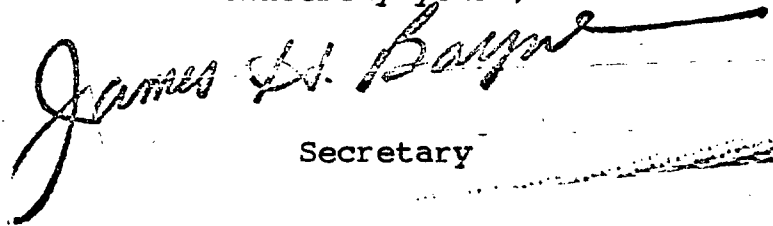
OFFICE OF THE SECRETARY

Charles T. Kappler, Esq.  
Alvord And Alvord  
916 16th Street, N.W.  
Washington, D.C. 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/13/85 at 12:05pm and assigned re-  
recording number(s). 14771

Sincerely yours,

  
Secretary

Enclosure(s)

14771  
REGISTRATION NO. \_\_\_\_\_ Filed 1425

AUG 13 1985 -12 05 PM  
INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

Dated as of: August 12, 1985

Parties: United States Rail Services Inc., a California corporation ("USRS") and MLL Equipment Investors-I, a New York limited partnership ("Owner").

Recitals:

- A. Owner owns the railroad cars ("Cars") listed and described in Exhibit A attached hereto.
- B. USRS engages in the business of managing railcars for railcar owners, and Owner desires to retain USRS as its agent for the purpose of managing the Cars on Owner's behalf. This Management Agreement is not intended as a partnership or a joint venture between USRS and the Owner and, in that respect, USRS has no authority to bind Owner without Owner's written consent, except as otherwise provided herein.

Agreements:

1. Engagement of USRS

Owner hereby engages USRS as its exclusive agent to manage the Cars, remarket the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and USRS accepts such engagement and agrees to act as the exclusive agent for Owner and perform in accordance with the terms and conditions hereof.

2. Term

The term of this Agreement and the agency created hereby shall commence as of the date hereof, and shall terminate on December 31, 1992. Owner may terminate this Agreement at the end of any calendar year upon at least ninety (90) days prior written notice to USRS.

Notwithstanding the expiration or any earlier termination of this Agreement, USRS and Owner shall continue to be obligated to fulfill all obligations arising out of events occurring prior to such expiration or termination. Anything herein to the contrary notwithstanding, this Agreement shall terminate with respect to any Car which is sold, lost or totally destroyed as of the date that such sale is consummated or such Car is lost or destroyed and settlement made therefor.

### 3. Duties of USRS

USRS shall provide and perform the following services on behalf of Owner as managing agent during the term of this Agreement:

(a) Immediately upon the execution of this Agreement, commence management of the Cars in accordance with the terms of this Agreement and in such manner as to optimize the Car earnings (gross revenues less expenses directly related to the Cars).

(b) At Owner's expense, register the Cars, identify itself as agent for Owner, file all initial and ongoing reports with the Association of American Railroads ("AAR"), Department of Transportation ("DOT"), Interstate Commerce Commission ("ICC") or other regulatory authority having jurisdiction over the Cars or any Lease (hereunder defined), register such Cars in such tariffs as required for their operation in railroad service, paint such Cars any appropriate color, and place on such Cars such markings or legends as it deems required or appropriate and as are approved by Owner.

(c) Acting on behalf of the Owner, execute in the Owner's name, as agent for Owner all required Association of American Railroads, Interstate Commerce Commission, local Public Utility Commission and all other governmental or industry agreements it deems necessary, appropriate or required in order to operate Owner's Cars in railroad service under this Agreement.

(d) Use its best efforts to keep the Cars under lease or otherwise in revenue producing service with shippers or other users of railroad cars. Such leases or other contracts ("Leases") shall (a) identify USRS as Agent for Owner and be on terms and conditions which are customary in the industry, and satisfactory to Owner, and (b) be for a term (taking into account options to renew) not to exceed the expiration date of this Agreement, December 31, 1992. USRS will provide Owner with a list of customers on a quarterly basis with a summary of terms and, if appropriate, file notice of the Leases with the ICC.

(e) Perform, on behalf of Owner, all of Owner's obligations under any Lease; provided, however, that any such obligations which require payments by Owner shall be performed by USRS subject to Section 3(f) hereof and to reimbursement of USRS by Owner as hereinafter provided in Sections 5 and 6 hereof.

(f) Perform all managerial and administrative functions incident to the operation of Owner's Cars, including (but not limited to) collecting all Gross Revenue, arranging for the maintenance and repair of such Cars for the account of the Owner, and keeping adequate records of the operation of such Cars. USRS will use reasonable efforts to have the Cars maintained in good running condition and conforming with all relevant rules and regulations of the AAR, ICC, DOT or other regulatory authority having jurisdiction over the Cars. In addition to all such maintenance and repair expenses, Owner shall also be responsible for all expenses incurred to move Cars to and from repair shops and maintenance facilities. USRS also shall arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that other than running repairs, (1) no alterations, modifications, improvements or additions whether or not required by the AAR, ICC or other regulatory authority and (2) repairs or maintenance expenses, exceeding \$1,000 per Car or in the aggregate exceeding \$10,000 per instance for all such alterations, modifications, improvements, additions, repairs or maintenance expenses referred to in clauses (1) and (2) of the subparagraph shall only be made with the prior approval of Owner. Such approval shall not be unreasonably withheld. USRS will monitor such maintenance and/or repairs to assure that the Owner bears only the proper charges for the maintenance or repairs performed.

(g) Arrange for any Cars not subject to a Lease to be stored, at Owner's expense, as economically as possible, subject to USRS' reasonable judgment, until such Cars can be placed in use under a Lease.

(h) At the commencement of USRS' management under this Agreement, inspect all the Cars to determine the condition and state of the Cars, and thereafter inspect such number of the Cars as USRS in its reasonable opinion, deems necessary in order to determine whether the Cars are being properly used and repaired. USRS shall inform Owner in writing in reasonable detail of the results of such inspections.

(i) Collect all rental payments, car hire, mileage allowances and any other revenue due Owner with respect to the Cars, identifying itself as agent for that purpose, and account for, and remit all sums due to Owner as hereinafter provided. USRS will use reasonable efforts to collect all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of the Agreement and to remit all sums due Owner as hereinafter provided. If, in order to collect sums due Owner or otherwise to enforce Owner's Lease rights, USRS deems it necessary to retain the services of outside counsel, the fees and expenses of such counsel shall be borne by Owner, provided that USRS has secured prior approval of the retention of such counsel for such purpose from Owner.

(j) Use reasonable commercial efforts to place in Owner's name, subject to Owner's prior approval, which approval shall not be unreasonably withheld, and at Owner's expense, such insurance in such

amounts and against such risks as may be necessary and customary in the industry in order to protect the interest of Owner in the Cars including, without limitation, insurance against (i) personal liability, including property damage and personal injury, and (ii) loss of or damage to the Cars. Such insurance shall name Owner, any lender to Owner identified to USRS, and USRS as co-insureds and Owner or any lender to Owner identified by Owner as Loss Payee.

(k) Prepare appropriate filings for and pay on behalf of Owner, and subject to reimbursement by Owner as provided in Section 5 and 6 hereof, all charges, property or ad valorem taxes, assessments, or levies imposed upon or against the Cars (other than charges, assessments, or levies payable by any party other than Owner under a Lease) of whatever kind or nature and defend against any such charges and seek revision or appeal from any assessment or charge deemed improper by USRS or Owner, all such actions to be in the name of Owner. If, in order to pursue such actions, USRS deems it necessary to retain the services of outside counsel or other professional persons, the fees and expense of such counsel shall be borne by Owner, provided that USRS has secured prior approval of the retention of such counsel or other professional persons for such purpose from Owner.

(l) Maintain complete and accurate records relating to the Cars in the same form and to the same extent as USRS customarily maintains records of its own cars, and in such a manner that information relating to the Cars and revenues and expenses associated with the Cars can be readily ascertained, and make such records available for inspection by Owner or any of Owner's representatives during reasonable business hours and, if requested by Owner, provide copies to Owner at Owner's expense.

(m) Cause the Cars to be moved, at the Owner's expense, to the required destination points, as provided in the Leases in the most cost effective manner. If possible and advisable, USRS will cause all Cars to be loaded and moved as revenue earning equipment to their destinations.

(n) Upon the termination or expiration of any Lease with respect to each Car, USRS will arrange, at Owner's expense (except to the extent such expenses are to be paid by another party under such Lease), for the transportation, gathering, storage and remarking of the Cars to the extent required. Following the termination of any Lease, USRS will use reasonable efforts to secure alternative Leases or other uses for the Cars which will maximize the economic return to Owner, subject to the provisions of Section 14 hereof.

(o) Use reasonable efforts to assure that the Cars are not used outside the United States.

#### 4. Revenues, Expenses and Net Earnings

(a) All revenue received by USRS in connection with the Cars from whatever source and for whatever reason (except as excluded below), including, but not limited to lease rental, per diem, mileage,



penalties, and demurrage ("Separate Gross Revenue") shall be deposited in an interest-bearing account (the "Account") in the name of Owner maintained by USRS exclusively for such revenue on Owner's behalf and shall be remitted to Owner by USRS on a quarterly basis. USRS shall remit indemnity payments and insurance proceeds to Owner within 30 days of receipt thereof. Prior to distribution, such monies will be deposited in the Account. Indemnity payments, insurance proceeds and interest earned on funds in the Account shall not be included in Separate Gross Revenue for purposes of this Agreement.

(b) As used in this Agreement, the term "Owner's Net Earnings" shall mean Separate Gross Revenue, less both expenses and management fees to which USRS is entitled under Sections 5 and 6 hereof.

#### 5. Expenses

USRS shall be entitled to reimbursement on a monthly basis for all disbursements that it has properly made in the performance of its duties as provided in this Agreement and which are specifically stated in this Agreement as being at the expense of Owner. If, at the time that any expense is incurred by USRS in the performance of its duties, the amount of Separate Gross Revenue is insufficient to fully cover such expense, other than and not taking into account the Management Fee as provided in Section 6 hereof, USRS shall immediately notify Owner, and Owner shall, within 10 days of receipt of such notice, remit to USRS an amount equal to the difference between such expense and Separate Gross Revenue.

#### 6. Compensation

USRS will undertake the complete management of all Owner's Cars for an aggregate monthly fee, payable on a monthly basis, equal to ten percent (10%) of the Separate Gross Revenue earned by the Cars in service with a minimum charge of \$20.00 per Car, per month. When Cars are off-lease and in storage, USRS will charge Owner an administrative charge of \$20.00 per Car, per month for the first one hundred (100) Cars in storage, and subsequent Cars put in storage (#101-231) shall be charged at the rate of \$18.00 per Car, per month. However, the maximum compensation to which USRS shall be entitled in any calendar year shall be an average monthly compensation equal to the greater of i) \$20 per Car, per month or ii) 10% of the average per Car, per month Separate Gross Revenues for the Cars. To the extent the compensation which USRS has received in a calendar year is in excess of the maximum compensation to which it is entitled, USRS shall reimburse Owner for such excess within 45 days after the end of the calendar year.

While the Cars are stored, the monthly administrative charges will be accrued. At such time as the Cars go back into revenue producing service, the total administrative charges will be due and payable and the administrative fee will be paid from the available Separate Gross Revenue. The balance accrued (if any), even if the Separate Gross Revenues are not sufficient to pay the total administrative charges due and owing to USRS, shall be paid to USRS annually on a calendar year basis. In the event the management by USRS hereunder is terminated, all of the accrued charges will be due and payable upon termination of the Agreement.

## 7. Distribution to Owner of Net Earnings

Within 45 days after the end of each calendar quarter, USRS shall distribute by wire transfer to Owner, Owner's Net Earnings plus interest earned in the Account during such quarter. At any time or from time to time during the term of this Agreement, USRS, in its reasonable judgement, and with the prior written consent of Owner, shall have the right to retain amounts from the quarterly distributions of Owner's Net Earnings for the purpose of creating reserves to pay for accrued expenses not yet due, expenses relating to the management of the Cars or to the efficient administration of this Agreement or expenses relating to the Cars arising or payable after the termination or expiration of this Agreement. All such amounts shall be held in the Account.

## 8. Reports

(a) Within 45 days after the last day of each calendar quarter during the term of this Agreement, USRS shall submit to Owner an unaudited report of the activity of the Cars for such preceding calendar quarter. This report shall summarize in reasonable detail the Separate Gross Revenue and Owner's Net Earnings for that quarter, the status of accounts receivable, the leasing arrangements for the Cars, the utilization during the quarter of the Cars under lease, re-leasing activity for the quarter, the number of Cars in storage, and any other pertinent information regarding the use of the Cars or the rail transportation industry in general.

(b) USRS shall notify Owner reasonably promptly upon becoming aware of (i) the occurrence of any event which would cause any Car to be taken out of service for more than 30 consecutive days; (ii) the occurrence of any event which is, or with notice or lapse of time, or both, would be an event of default under a Lease; (iii) the occurrence of any event which would enable Owner to terminate a Lease with respect to any Car; (iv) the imposition of any rules or regulations by any regulatory authority having jurisdiction over the Cars which may have a material impact on the Owner's revenue or expense relative to the Cars. Should unusual wear, premature failures or other such events require the Cars to be taken out of service and be subject to high maintenance or repair costs, USRS will inform Owner of any special engineering investigations required in connection therewith, and will advise Owner of the cost of investigations prior to performing necessary work. Such investigations shall be performed at Owner's expense, but shall not be commenced without prior approval.

(c) Owner shall have the right, directly or by its agents, to inspect USRS records with respect to the matters covered by this Agreement at such reasonable time as the Owner may request during the term of this Agreement and, if requested by Owner, provide copies to Owner at Owner's expense.

(d) USRS shall provide oral updates if reasonably requested to do so by Owner.

9. Right of Sale

Owner shall have the right, upon 30 days written notice to USRS to sell any Car or Cars, provided, however, that notwithstanding any sale, such Car or Cars shall remain subject to the terms of any Lease or Leases to which they have been made subject as provided herein. USRS shall have no authority to sell any of the Cars unless such authority is granted in writing by Owner.

10. Representations, Warranties and Covenants

(a) USRS represents, warrants and covenants that:

(i) USRS has full power and authority to execute, deliver, and comply with this Agreement.

(ii) All required proceedings, corporate or otherwise, in respect of the execution, delivery and performance under this Agreement have been complied with properly and in a timely manner.

(iii) The entering into and performance of this Agreement by USRS will not violate any judgement, order, law or regulation applicable to USRS, or result in any breach of, or constitute a default under or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of USRS or on the Cars pursuant to any instrument to which USRS is a party or by which it or its assets may be bound.

(iv) There is no action or proceeding pending or threatened against USRS before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of USRS.

(v) The Agreement evidences the legal, valid and binding obligation of USRS enforceable in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally or by the application of equitable principles in any proceeding (legal or equitable) involving the enforcement of any of the provisions of the Agreement.

(vi) There is no fact which USRS has not disclosed to Owner in writing which, nor is USRS a party to any agreement or instrument which, so far as USRS can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of USRS to perform its obligations under this Agreement.

(vii) If requested by Owner, USRS will provide Owner a legal opinion as to items (i) through (v) above.

(b) Owner represents, warrants and covenants that:

(i) Owner has full power and authority to execute, deliver, and comply with this Agreement.

(ii) All required proceedings, corporate or otherwise, in respect of the execution, delivery and performance under this Agreement have been complied with properly and in a timely manner.

(iii) The entering into and performance of this Agreement by Owner will not violate any judgement, order, law or regulation applicable to Owner, or result in any breach of, or constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Owner or on the Cars pursuant to any instrument to which Owner is a party or by which it or its assets may be bound.

(iv) The Agreement evidences the legal, valid and binding obligation of Owner enforceable in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally or by the application of equitable principles in any proceeding (legal or equitable) involving the enforcement of any of the provisions of the Agreement.

(v) There is no action or proceeding pending or threatened against Owner before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Owner.

(vi) There is no fact which Owner has not disclosed to USRS in writing which, nor is Owner a party to any agreement or instrument which, so far as the Owner can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Owner to perform its obligations under this Agreement.

(vii) If requested by USRS, Owner will provide USRS a legal opinion as to items (i) through (v) above.

#### 11. Default

(a) The occurrence of any of the following events shall be an event of default:

(i) The non-payment by USRS or Owner of any sum required herein to be paid within ten (10) days after written notice that any such payment is overdue.

(ii) The breach by either party of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days after written notification of breach.

(iii) Any act of insolvency by either party or the filing of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against either party that is not dismissed within sixty (60) days from the date of said filing or the appointment of a receiver or trustee to take possession of the properties of such party, unless set aside or withdrawn or ceases to be in effect within 60 days from the date of said filing or appointment.

(v) Fraud, gross negligence, or intentional misconduct on the part of either party hereto with respect to any of its obligations as set forth in this Agreement.

(b) Upon the occurrence of any event of default and in addition to any other remedies provided under applicable law, the party not in default may, at its option, terminate this Agreement or proceed by any lawful means to enforce performance of this Agreement.

## 12. Termination

Upon termination or expiration of this Agreement, USRS shall, at Owner's expense, take control of the Cars on behalf of Owner, to the extent appropriate, store or transport (or arrange to store or transport) the Cars to a location designated by Owner, and thereafter Owner shall assume responsibility for and control of the Cars except that Owner may continue to use the marks of USRS if then present on any Cars for the convenience of return and redeployment of the Cars, provided, however, that if termination occurs as a result of a default by USRS as set forth in Section 11, Owner may take control of the Cars and USRS will pay the reasonable costs incurred by Owner in connection with the return of the Cars to Owner's control.

## 13. Indemnification

Owner shall defend (if such defense is requested by USRS), indemnify and hold USRS harmless from and against any and all third-party claims, actions, damages, expenses (including reasonable attorneys' fees and reasonable cost of investigation), losses or liabilities (including those based on the principle of "Strict Liability in Tort") incurred by or asserted against USRS as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars including, claims for injury to or death of persons, loss of or damage to property (including the Cars), and economic loss due to the unavailability for use of the Cars; provided, however, that (a) Owner shall not defend, indemnify or hold USRS harmless from and against, and USRS shall not be exculpated from any claim, action, damage, expense, loss or liability caused by or arising from the gross negligence, bad faith, recklessness, or wilful misconduct of USRS and (b) USRS shall have given Owner prompt written notice of the institution against USRS of any legal proceeding by any third party and shall have afforded Owner the opportunity to defend such legal proceeding

in the name of USRS or Owner, with counsel of Owner's choosing but at the sole cost and expense of Owner.

#### 14. Conflicts of Interest

(a) If a Car subject to this Agreement is available for lease, revenue producing service, or sale, at the same time that a similar car of the same car type ("Similar Car") owned, managed, or leased by USRS is available for lease, revenue producing service, or sale (or comparable uses), USRS shall first give effect to the bona fide preferences and desires of the prospective lessee or purchaser. With respect to all Cars and Similar Cars off-lease or available for sale at any time after giving effect to such preferences and desires, the car (whether a Car or Similar Car) which has been off-lease and/or available for the longest period of time shall be leased or sold first. In determining whether cars are similar for purposes of this Section, USRS shall be entitled to take into account the location, age, condition, suitability to the needs of a proposed lessee or purchaser, special equipment, cost and time to prepare for service and other relevant factors concerning all railcars USRS is attempting to re-lease or sell.

(b) USRS shall not have breached the standard of performance set forth in Section 14(a) above and shall have no liability to Owner if USRS shall have leased a car owned, managed, or leased by USRS, which is not a Similar Car, or the Car is subject to a Lease at the time of the commencement of the proposed lease or of sale.

#### 15. Notices

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to Owner: MLL Equipment Investors-I  
c/oML Leasing Partners, Inc.  
One Liberty Plaza  
165 Broadway-48th Floor  
New York, New York 10080  
Attn: Lester Schoenfeld, President

If to USRS: United States Rail Services, Inc.  
P. O. Box 3985  
San Francisco, CA 94119  
Attn: Carol J. Kane, Assistant Secretary

and any party may change such address by notice given to the other party in the manner set forth above.

#### 16. Relations with Lessees; Withdrawal of Cars from the Leases; USRS' Remedies Against Defaulting Owner

(a) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon, any foreclosing mortgagee, donee or other transferee of the Cars, and any foreclosing mortgagee, donee or transferee shall acknowledge USRS as such foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under any Lease.

(b) USRS on behalf of Owner, shall exercise all rights of the lessor of the Cars under any Lease without being required to seek or receive the consent of or instructions from Owner, except as expressly required under the terms of this Agreement.

(c) If Owner shall at any time be in default hereunder and USRS shall terminate this Agreement, then USRS may require the transfer of any lease to USRS or the withdrawal of all of Owner's Cars from such Lease, and substitute thereunder cars substantially identical in all material respects to the Cars so withdrawn; provided, however, that in its notice of default ("Default Notice") to Owner, USRS shall indicate its intention to substitute cars, in which case Owner shall have the longer of 45 days or the applicable grace period allowed under Section 11 hereof from the date the Default Notice is received to cure the default. If default is not cured within the maximum grace period (as provided in the previous sentence) allowed, USRS shall have the right to substitute substantially Similar Cars for a 60 day period commencing after such grace period has expired.

#### 17. Miscellaneous

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

(b) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(c) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment of this Agreement shall be valid unless in writing and executed by both parties hereto.

(d) Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or USRS or transfer of any of the Owner's or USRS respective rights hereunder, whether by operation of law or otherwise, shall be valid and effective as against USRS or Owner without the prior written consent of both USRS and Owner, which consent shall not be unreasonably withheld, except that it is understood that Owner may assign this Agreement to any lender to the Owner without such consent.

(e) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any Federal, State or local government or any agency thereof.

(f) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(g) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written:

MLL EQUIPMENT INVESTORS-I

By: Carolyn G. Huber

its Treasurer of GP

UNITED STATES RAIL SERVICES, INC.

By: B. N. Campbell

its VICE PRESIDENT



SCHEDULE A  
MLL EQUIPMENT INVESTORS-I

<u>Description of Cars</u>	<u>Serial # (Inclusive)</u>	<u>Number of Cars</u>	<u>New RUSX Car Numbers</u>
4750 cubic foot covered hopper cars, 100 ton trucks (per North American Car Corporation Specification No. 4750F, attached)	64257-64282	26	5301 - 5326
same as above	486711-486716	6	5377 - 5382
same as above	478100-478149	50	5327 - 5376
same as above	487209-487244	36	5384 - 5419
same as above	487246-487247	2	5421 - 5422
same as above	487249-487275	27	5424 - 5450
same as above	487654-487689	36	5451 - 5486
same as above	487691-487709	19	5488 - 5506
same as above	487711-487732	22	5507 - 5528
same as above	487078	1	5383
same as above	487245	1	5420
same as above	487248	1	5423
same as above	487690	1	5487
same as above	487733-487735	3	5529 - 5531
		<u>231</u>	

CAR  
DRAWING NAC D-4100 GRAVITY

SPEC. NO. 4750F

GENERAL DESCRIPTION:

750CF, 55'-3", 100 Ton, Welded, Triple Hopper, Center Sill, Trough Hatch, Roller Bearing  
 Truck Springs 3 11/16", ABDW 8 1/2" X 12" Brake Equipment, 2 Composition Shoes, High Capacity  
 Draft Gear & Type "E" Coupler, 14" Center Plate

DISCHARGE SYSTEM:

Jack &amp; Pinion Slide Gates (3)

TYPE OF HATCH COVERS:

Fiberglass Trough Hatch (6)

GENERAL DIMENSIONS

Truck Centers -----	45'-9"
Length Inside -----	55'-3 3/8"
Length Over Strikers -----	57'-4"
Length Over Coupler Pulling Faces -----	59'-11 1/2"
Length Over Running Boards -----	58'-0 1/2"
Height From Rail to Discharge Outlet -----	11 1/2"
Height Extreme -----	14-11
Height From Rail to Extreme Width -----	3'-6 1/8"
Height From Rail to Eaves -----	14'-5 5/8"
Width at Eaves -----	9'-1 1/2"
Width Extreme -----	10'-8"
Width Inside -----	10'-0 1/2"
Slope of Hopper Sheets -----	45°
Roof Hatch Opening -----	20" X 48'-1 1/4"
Number of Roof Hatches -----	6
Number of Discharge Outlets -----	3
Size of Discharge Outlets -----	24" X 30"
AAR Clearance -----	Plate B
AAR Classification -----	LO
Truck Capacity -----	100 Ton
Average Light Weight -----	62,000
Gross Rail Load -----	263,000
Cubic Capacity -----	4750
Center of Gravity Loaded Car -----	94.72"
Degree of Curve -----	25°
Turning Radius - Coupled to Base Car -----	225 Ft.
Turning Radius - Coupled to Like Car -----	228 Ft.
Turning Radius - Uncoupled -----	150 Ft.

State of New York  
County of New York

ss:

On this 12<sup>th</sup> day of August, in the year 1985, before me, a Notary Public, personally appeared Carolyn G. Hubsch ~~land~~ to me known to be the person (or persons) described in, and who executed the foregoing instrument, and acknowledged to me that he (or she or they) executed the same as his (or her or their) free act and deed for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in said county and state on the day and year last above written.

Notary: Please complete state, county, date  
and names of all persons signing,  
and affix notarial seal.

YAG  
Notary Public in and for said State

My Commission Expires: March 30, 1987  
(Notary Seal)

**YOLANDA AGOPIAN**  
Notary Public, State of New York  
No. 41-4885317  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires March 30, 1987

NATIONAL ACADEMY  
 1000 L STREET, N.W.  
 WASHINGTON, D.C. 20004  
 (202) 334-2500  
 FAX (202) 334-2501

